



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNSD, MNDC, FF

### Introduction

This hearing was convened in response to an application by the Tenants pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order for return of the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlords and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

### Preliminary Matter

During the Hearing the Landlord stated that the hearing package and evidence was not provided to the Landlord until March 2015. The Tenant did not dispute this service date. The Landlord states that while the Landlord does not feel sufficient time was provided to respond to the Tenant's claims the Landlord is not seeking any further time and is prepared to move ahead with the hearing.

### Issue(s) to be Decided

Are the Tenants entitled to compensation?

Are the Tenants entitled to return of double the security deposit?

Are the Tenants entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on December 1, 2013 on a fixed term to end August 31, 2014. The tenancy ended on August 31, 2014. Rent of \$1,200.00 was payable monthly. At the outset of

the tenancy the Landlord collected \$600.00 as a security deposit. The Parties conducted an informal inspection at move-in and no condition inspection report was completed. The Tenant provided it forwarding address on September 3, 2014.

The Tenants state that the security deposit was returned in full to the Tenants and that they received it a day or two later than its date stamp of September 16, 2014. The Tenants claim \$600.00 as the amount remaining for return of double the security deposit.

The Tenant states that mold was discovered in the unit around the windows, chimney and in the bathroom in March 2014. The Tenant states that they first tried to remove the mold with bleach and then informed the Landlord in March 2014. The Tenant states that the Landlord varnished the window sills in April and again in mid May 2014. The Tenant states that they asked the Landlord for a dehumidifier but the Landlord refused. The Tenant states that mold was present until move-out.

The Landlord states that when the windows were re-varnished no other mold was present other than one corner of the bathroom and that their contractor did not raise a requirement for a dehumidifier. The Landlord states that the Tenants did not report any further problem with mold until August 2014 and that the Landlord inspected the unit on August 28, 2014 finding mold on the chimney and behind the bed. The Landlord states that the contractor informed them that no water was leaking into the unit and that the mold could be wiped clean. The Landlord states that the contractor informed the Landlord that the unit was moist but felt that the bathroom fan was sufficient. The Landlord states that the mold was dealt with and that the Tenants maintenance of the unit was poor. The Tenant responds that they only noticed the mold at move-out.

The Tenant states that various possessions of the Tenants were damaged by the mold and claim amounts as set out in the monetary worksheet. The Tenant states that the mold caused allergies and the Tenant claims \$109.95 for allergy pills. The Tenant states that no doctor prescribed this medication and it was taken on the suggestion of a friend. No receipt was provided.

The Witness provided evidence in relation to construction work that was being done during the tenancy that caused disturbances to the Tenant however there is no detail of a monetary amount in relation to this disturbance in the application or monetary worksheet and the Tenant did not further identify any amount at the hearing as being claimed in relation to such losses.

### Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Based on the Tenant's evidence that the security deposit was received as late September 18, 2015, I find that the Landlord returned the amount within 15 days of receipt of the Tenants forwarding address. I therefore dismiss the Tenants' claim for an extra amount.

There is no dispute that the Landlord attended to the mold when first reported. Given the Tenant's evidence that the mold was not noticed until August 2014, although the Tenant argues that the mold was present from April 2014, the Tenant also gives evidence that the mold was not detected by them until August 2014. This tends to support the Landlord's evidence of the Tenant's lack of maintenance and I find that this supports/establishes a contribution to the presence of mold. I accept the Tenant's evidence that the light switch for the bathroom connects to a fan and that this was used normally. There is no evidence that the Landlord requested the Tenant's use of fan more frequently. It is clear that the Landlord did not provide a dehumidifier in March 2014 when the problem was first noted however the contractor's letter makes no mention of the original problem. I am not satisfied that the Landlord has shown to have taken any precautions or proactive measures to reduce a further reoccurrence beyond repairing the windows. As a result I find that both Parties are equally responsible for the appearance of mold at the unit.

As the Tenant has not provided any receipt or medical note to support its claim for the allergy pills I dismiss this claim. The remaining monetary amounts claimed for mold damage add up to \$1,009.00. While I consider that the Tenant provided photos of most of the items being claimed, there is no evidence that the amounts are anything other than the Tenant's own estimates, some of which may be reasonable and some of which may not. I find therefore that the Tenant has only substantiated a nominal loss of \$500.00 and I reduce this by half to take into account the Tenants' equal contribution to the damage caused by the mold leaving an entitlement of **\$250.00**.

Section 52 of the Act provides that an application for dispute resolution must include full particulars of the dispute that is to be the subject of the dispute resolution proceedings. While the Tenant's evidence package contained a letter to the Landlord in relation to construction work no amount of a monetary claim was identified either on the application or the monetary work sheet. The Tenant provided no oral evidence of a monetary amount being claimed for this construction. As I result, I find that the Tenants did not provide full particulars and that I must dismiss the monetary claim for damages.

As the Tenants' application had merit, I find that the Tenants are entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$300.00**.

#### Conclusion

I grant the Tenants an order under Section 67 of the Act for **\$300.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 27, 2015

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Residential Tenancy Branch

